Years	IAS	IPS	IFS
2004	1	1	—
2004 (15/4/2005)	2	1	1
TOTAL	9	5	1

Promotional Policy for Central Government Employees

†3796. SHRI DILIP SINGH JUDEV: Will the PRIME MINISTER be pleased to state:

(a) whether the policy to deny promotion for the period till the cases of the officials of Central Government, in respect of whom the departmental enquiry and prosecutions accorded, are resolved and they are proved innocent, is equally applicable to all the employees;

(b) if so, whether the said policy is applicable on all the categories of employees;

(c) if not, the reasons for such discrimination; and

(d) the names of such Ministries where benefits alongwith promotion has been given to such officials and employees who are involved in corruption, misconduct and other serious cases?

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (SHRI SURESH PACHOURI): (a) The policy in this regard is as laid down in the Department of Personnel and Training O.M. No. 22011/4/91-Estt. (A) dated 14th September, 1992, a copy of which is laid on the Table of the House Statement (*See* below).

(b) Yes, Sir.

(c) Does not arise.

(d) Benefits of the recommendations for promotion kept in sealed cover during the pendency of the proceedings are granted consequent on exoneration of the officials in the disciplinary case/criminal prosecution by the various appointing authorities spread over the various Ministries/Departments/Offices of the Government of India. Information in this regard is not centrally monitored/available.

†Original notice of the question was received in Hindi.

Statement

Policy regarding promotion of Govt. Servants against whom departmental proceedings etc. are pending

No. 22011/4/91-Estt. (A)
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel & Training)

North Block, New Delhi-110001
Dated, the 14th Sept., 1992

OFFICE MEMORANDUM

Sub. : Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation—Procedure and guidelines to be followed.

The undersigned is directed to refer to Department of Personnel & Training OM No. 22011/2/86-Estt. (A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgement dated 27.08. 1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (OM No. 39/3/59-Estt. A dated 31.08.1960, 7/28/63-Estt. A dated 22.12.1964, 22011/3/77-Estt. A dated14.07. 1977, 22011/1/79-Estt.A dated 31.01.1982, 22011/2/1986-Estt. A dated 12.01.1988, 22011/1/91-Estt. A dated 31.07.1991), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

Cases of Government Servants to whom Sealed Cover Procedure will be applicable.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:—

(i) Government servants under suspension;

(ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and

(iii) Government servants in respect of whom prosecution for a criminal charge is pending.

Procedure to be followed by DPC in respect of Government servants under cloud.

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of.....in respect of Shri ..... (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri .....' The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

Procedure by subsequent DPCs.

2.2. The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/ criminal proscution against the Government servant concerned is concluded.

Action after completion of disciplinary case/criminal prosecution.

3. On the conclusion of the disciplinary case/criminal prosecution which result in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstance where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary

rules 'warning' should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of 'censure' should be imposed.

Six Monthly review of 'Sealed Cover' cases.

4. It is necessary to ensure that the disciplinary case/ criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, *inter alia,* cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

Procedure for ad-hoc promotion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:—

(a) Whether the promotion of the officer will be against public interest;

(b) Whether the charges are grave enough to warrant continued denial of promotion;

(c) Whether there is any likelihood of the case coming to a conclusion in the near future;

(d) Whether the delay in the finalisation of proceeding, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and

(e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:—

(i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and

(ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical ground and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

Sealed cover procedure for confirmation.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion.

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Account Department are concerned, these

instructions have been issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version will follow.

Sd/-
(M.S. BALI)
DIRECTOR

To

All Ministries and Departments of the Government of India with usual number of spare copies.

No. 22011/4/91-Estt. (A) Dated the 14th September, 1992

Copy forwarded for information to:—

1. Central Vigilance Commission, New Delhi.
2. Central Bureau of Investigation, New Delhi.
3. Union Public Service Commission, New Delhi.
4. Comptroller and Auditor General, New Delhi.
5. President's Secretariat/Vice President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat and Prime Minister's Office.
6. Chief Secretaries of All States and Union Territories.
7. All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.

Sd/-
(M.S. BALI)
DIRECTOR